



FAO-7131-2019 (O&M)

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO-7131-2019 (O&M)

Date of Reserve: November 12, 2025

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Future General India Insurance Co. Ltd.

.....Appellant(s)

vs.

Urmila and others

.....Respondent(s)

Whether only the operative part of the judgment is pronounced?

NO

Whether full judgment is pronounced?

YES

CORAM: HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Punit Jain, Advocate, for the appellant.

Mr. Gaurav Gaur, Advocate
for respondent Nos. 8 and 9.

SUDEEPTI SHARMA J.

1. The present appeal has been preferred by the appellant-Insurance Company against the award dated 26.09.2019 filed under Section 166 of the Motor Vehicles Act, 1988 by the learned Motor Accident Claims Tribunal, Fatehgarh Sahib (for short, 'the Tribunal') whereby the claimant was granted compensation to the tune of Rs.17,40,000/- and the Insurance Company was held liable to pay the compensation.

FACTS NOT IN DISPUTE

2. Brief facts of the case are that on 3.1.2019, Vinod alongwith Bajrangi, was going on foot on correct left hand side of the road, in the area of P.S.Mandi Gobindgarh. At about 5.30 p.m., when they reached near Bansal Kanda on Ludhiana-Sirhind road, then in the meantime, offending car bearing No.UP-32JD-



respondent No.1 Swapnil Yaduvanshi, in a rash and negligent manner. On account of sudden appearance of stray calf in front of the offending car, and in order to save the calf, respondent No.1 applied brakes and turned his car towards left hand side and then he could not control it and struck the offending car against Vinod. Due to said accident, Vinod fell down on the glass of the car and sustained multiple injuries. Injured Vinod was taken to Civil Hospital Mandi Gobindgarh, but he succumbed to his injuries and died on the way to Hospital. The accident in question took place due to rash and negligent driving of offending vehicle by respondent No.1 and regarding the said accident, DDR No.27 dated 4.1.2019, was lodged at Police Station Mandi Gobindgarh, on the statement of Bajrangi, eye witness of the occurrence.

3. Upon notice of the claim petition, respondents appeared and admitted the factum of compensation.

4. From the pleadings of the parties, the following issues were framed by the learned Tribunal :-

“1. Whether Vinod s/o Mata Prasad died on account of injuries received in road accident occurred on 3.1.2019 caused due to rash and negligent driving of Car No.UP-32-JD-0681, by respondent No.1?OPP

2. Whether the claimants are entitled to compensation as prayed for, if so, to what extent and from which of the respondents? OPP.

3. Whether present claim petition is not maintainable? OPR

4. Whether claimants have no locus standi to file the claim petition? OPR3



5. Whether respondent No.1 was not holding valid and effective driving licence and the offending vehicle does not have valid registration certificate, tax receipts etc., at the time of accident, if so, its effect? OPR3

6. Relief.”

5. After taking into consideration the pleadings and the evidence on record, the learned Tribunal awarded compensation to the claimants. However, the appellant-Insurance Company was held liable to pay the compensation. Hence, the present appeal.

SUBMISSION OF LEARNED COUNSEL FOR THE PARTIES.

6. Learned counsel for the appellant-Insurance Company contends that in the initial version of claimant as recorded in DDR was that no one was at fault and the accident occurred due to sudden appearance of animal in front of the car. Therefore, the learned Tribunal has wrongly held that the accident in question took place due to rash and negligent driving of respondent No. 8 (driver of the offending vehicle). He further contends that the learned Tribunal has wrongly deducted 1/5th as personal expenses whereas as per settled law, the same ought to be 1/4th. He, therefore prays that the present appeal be allowed.

7. Learned counsel for the respondent No. 8 and 9 vehemently argues on the lines of the award and prays that the present appeal be dismissed.

8. I have heard learned counsel for the parties and perused the whole records of the case.

9. Before proceeding further, it is relevant to reproduce the relevant portion of the award, which reads as under:-

***“ISSUE NO.1.***

8. Onus to prove this issue was put upon the claimants. To prove this issue, claimants examined CW2 Bajrangi, eye witness of the occurrence, who has supported the averments of claim petition, with regard to accident in question. CW2 has deposed that on 3.1.2019, he and Vinod, were going on correct left hand side of the road. He further stated that at about 5.30 p.m., when they reached near Bansal Kanda on Ludhiana-Sirhind road, then in the mean time, car No.UP-32JD-0681 came there from behind ie. Ludhiana side, which was being driven by its driver i.e. respondent No.1 Swapnil Yaduvanshi, in a rash and negligent manner. CW2 further deposed that on account of sudden appearance of stray calf on the road in front of the offending car, respondent No.1 had applied brakes in order to save the calf and turned his car towards left hand side, but he (respondent No.1) could not control his car and struck it against Vinod. He further stated that due to this accident, Vinod fell on the glass of the said car and sustained multiple injuries and he was taken to Civil Hospital Mandi Gobindgarh, but he succumbed his injuries on the way to Hospital. CW2 specifically stated that said accident took place due to sole rash and negligent driving of offending car by respondent No.1. This witness has proved copy of DDR Ex.C2 recorded at his instance at P.S.Mandi Gobindgarh, qua the said accident. During his cross-examination, this witness has admitted that no FIR has been lodged against respondent No. 1 and that no complaint has been made by him or claimants, for not lodging the FIR.



Apart therefrom, claimants also placed on record copy of post mortem report of deceased Vinod as Ex.C1.

9. To rebut the above evidence of the claimants, respondent No.1 Swapnil Yaduvanshi i.e. driver of vehicle involved in the accident, himself stepped into witness box as RW1 and deposed that on 3.1.2019, he was coming from Amritsar and going towards Lucknow and he was driving car No. UP-32-JD-0681 at a normal speed, registered in the name of respondent No.2 vide copy of RC Ex.R2. RW1 further deposed that when he reached Mandi Gobindgarh, a street cow came in front of the car from the side of highway and hit his car and damaged his car. He further stated that his car never hit Vinod Kumar, as alleged and a false claim petition has been filed by the claimants. This witness also proved copy of insurance of the vehicle in question as Ex.R3.

Pankaj Mishra, owner of the offending vehicle also appeared as RW2 and made similar statement as deposed by RW1 Swapnil Yaduvanshi.

Further, respondents examined RW3 SI Gurbachan Singh, who has deposed that the accident in question had taken place on 3.1.2019 and regarding which, he lodged the DDR as per statement of Bajrangi. He further deposed that no FIR was lodged in this case, as accident had not taken place due to negligence of anyone. He proved copy of DDR as Ex.C2 (already exhibited). During his cross-examination, this witness has stated that no investigation was done in the DDR, as FIR was not registered. The car was also damaged in the accident. RW3 admitted that the car had struck against Vinod Kumar.



10. *Ld. counsel for the respondents have argued that from the above evidence of the respondents, it is proved that no accident, as alleged by the claimants, had taken place and car in question never struck against Vinod Kumar. He further argued that a false DDR has been lodged by the claimants in connivance with the Police. Ld.counsel further argued that even perusal of DDR Ex.C2, it can be concluded that nobody was at fault for the unfortunate occurrence and even Bajrangi has stated in his statement before police that he does not want to take any action against anyone, but lateron before this Tribunal, CW2 has made improvements in his statement. Ld.counsel further submitted that keeping in view above facts and circumstances, this issue may be decided in favour of the respondents and against the claimants.*

On the other hand, Ld.counsel for the claimants vehemently opposed the submissions of Ld.counsel for the respondents and submitted that the claimants have led sufficient oral and documentary evidence to prove this issue. He further submitted that in the DDR Ex.C2, number of vehicle in question has been mentioned, and it has also been mentioned that due to sudden appearance of stray cow, respondent No.1 could not control the offending vehicle and struck against Vinod Kumar, due to which he sustained injuries and succumbed to those injuries. Ld.counsel further submitted that mere mentioning of fact in DDR, lodged by Bajrangi, eye witness of occurrence, that there was no negligence of anyone, and he does not want to take action against anyone, then it cannot be concluded that accident in question was not caused by respondent No.1 due to his rash



and negligent driving of offending vehicle. He lastly prayed that this issue may be decided in favour of the claimants.

11. I have considered the respective arguments of Ld counsel for the parties and have perused the record of the case very carefully. I do not agree with the contention of Ld.counsel for the respondents. So far as the contention of Ld.counsel for respondents that vehicle in question never struck against Vinod Kumar is concerned, RW3 SI Gurbachan Singh examined by the respondents, has admitted in his cross-examination that offending car had struck against Vinod Kumar. Moreover, Bajrangi CW2 has specifically stated in his statement that accident in question had occurred due to sole rash and negligent driving of offending vehicle by respondent No.1, as due to sudden appearance of stray cow, he lost control over the offending vehicle and struck it against Vinod Kumar, due to which he sustained injuries.

Next contention of Ld.counsel for the respondents that only DDR has been recorded in this case and it has also been mentioned in DDR that no one was at fault and no action was taken against anyone and Bajrangi has made improvements in his statement before this Tribunal. Again, I do not agree with this contention. It is admitted case of parties that a stray cow appeared on the road. The stand of the claimants that due to sudden appearance of stray cow, respondent No.1 had applied brakes and turned his car towards left hand side and could not control it and struck it against Vinod, whereas it is stand of respondents that stray cow struck against the car, and car had not struck against Vinod Kumar. Perusal of testimony of CW2 Bajrangi, it is evident that he has deposed the facts in consonance with his version



recorded in the DDR that a stray cow appeared on the road, respondent No.1 applied sudden brakes, lost control of offending vehicle and struck it against Vinod Kumar. Bajrangi being brother of deceased might not have been able to understand the gravity of situation when he lodged the DDR. Moreover, respondent No.1 is unable to produce any documentary evidence qua his version. Respondent No.1 was required to stop the vehicle with safety and care, when a cow suddenly appeared on the road, to avoid the accident, but in the present case, respondent No.1 could not do so. Apart from that RW3 SI Gurbachan Singh has also stated that the offending car had struck against Vinod Kumar. In view of above circumstances, it is difficult to accept the contentions of Ld.counsel for the respondents as well as oral statements of RW1 and RW2. Moreover, claim petition has to be decided on the basis of evidence led before the Tribunal and not before the police. In a case relating to motor accident claims, the claimants are not required to prove the case, as it is required to be done in a criminal case. Strict proof of an accident caused by a particular vehicle, in a particular manner, may not be possible by the claimants. The claimants are merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not be applied in the claim petition. Keeping in view above discussion, I find no merit in the submissions of Ld.counsel for the respondents and it is held that the claimants have led oral as well as documentary evidence to prove this issue. from which it is proved that Vinod Kumar had died due to injuries sustained in road side accident, occurred on 3.1.2019 due to rash and negligent driving of offending vehicle No.UP-



32-JD-0681 by respondent No.1 Swapnil Yaduvanshi. Accordingly, this issue stands decided in favour of the claimants.

ISSUE No.2.

12. Onus to prove this issue was also put upon the claimants. In support of this issue, claimant No.1/CW1 Urmila, widow of deceased Vinod Kumar, has deposed that she is widow, claimant No.2 is father, and claimants No.3 to 7 are children of deceased Vinod Kumar. She has further deposed that deceased was 40 years of age and was hale and hearty at the time of his death. CW1 further deposed that the deceased was working as skilled labourer, working in Alloys Steel Rolling Mills Sirhind, and he used to earn Rs.15,000/- per month. She has further deposed that due to untimely death of the deceased, she and other claimants have lost his love and affection and they were fully dependent upon the income of the deceased. CW1 further deposed that after the death of Vinod, there is no one in the family to earn and maintain the claimants, as deceased was the only bread winner of the family. CWI further deposed that they had spent an amount of Rs.80,000/- on transportation of dead body, funeral and last rites of the deceased and that they are entitled to get compensation from the respondents on account of death of Vinod.

On the other hand, the respondents have failed to lead cogent and convincing evidence to rebut the above discussed evidence of the claimants. So, keeping in view, the whole facts and circumstances of this case, claimants being widow, father and children of the deceased, deserve reasonable compensation in this case on account of death of Vinod, in the road side accident, as per their claim petition.



13. Claimants in the claim petition have claimed that the deceased was aged about 40 years at the time of his death. But no documentary evidence has been led by them, to show exact date of birth of the deceased. In the post mortem report Ex.CI, age of the deceased is mentioned as 40 years. There is no rebuttal qua this evidence from the side of respondents So, it is held that deceased was of the age of 40 years at the time of his death. So far as income and profession of the deceased is concerned, no documentary evidence has been led in this regard, by the claimants. As such, oral statement of CWI cannot be believed that deceased used to earn Rs. 15,000/- per month, while working as skilled labourer in Alloys Steel Rolling Mills, Sirhind. So some guess work has to be done to assess the income of the deceased at the time of his death. It is a matter of common knowledge that in these days i.e. in the year 2019, even a labourer could earn Rs.9,000/- per month easily by doing labour work. As such, monthly income of deceased Vinod is assessed as Rs.9,000/- per month. As per the guidelines laid down in the latest Judgment of Hon'ble Supreme Court of India, in case National Insurance Co. Ltd. v/s Pranay Sethi and others, reported as 2017 SCC 1270, future prospects of the deceased, who was self employed, in other words, who was not a Govt. employee, or was not having fixed income/ salary, have to be assessed, for the purpose of awarding compensation to the claimants. The future prospects are to be added to the sum on the percentage basis, while determining the age group of the deceased. It was also held in said Judgment that "an addition of 25% of the established income should be the warrant where the deceased was between the age of 40 to 50 years".



Now, coming to the case in hand, deceased Vinod was 40 years of age, at the time of his death, so keeping in view the above referred Authority National Insurance Co. Ltd.' case (supra), monthly income of deceased becomes Rs.11,250/- (i.e. Rs.9000/- as assessed Rs.2250/- [25% of Rs.9000) as future prospects). After deducting 1/5 from his monthly income for his own use and expenses, monthly dependency of claimants come to Rs.9000/- (11250-2250) per month. In this way, annual dependency of the claimants come to Rs.9000 X 12 Rs.1,08,000/-, Keeping in view of the age of the deceased, coupled with entire facts and circumstances of this case, multiplier of '15' to be applied in this case is most suitable. After applying said multiplier, the amount of compensation comes to Rs.16,20,000/- (i.e. Rs.1,08,000 x 15 Rs.16,20,000 /-). Apart therefrom, claimant No.1, widow of the deceased, is also entitled to Rs.40,000/- on account of loss of consortium, and claimants are further entitled for another amount of Rs.15,000/- as loss of estate, and Rs.15,000/-as funeral expenses. Apart from that, claimants are further entitled to amount of Rs.50,000/-on account of loss of love and affection of the deceased. In this way, claimants are entitled for total amount of compensation of Rs.17,40,000/- (i.e. Rs. 16,20,000/- plus Rs. 40,000/- plus Rs.15,000/- plus Rs.15,000/- plus Rs.50,000/- Rs. 17,40,000/-).

RC of the offending vehicle Ex.R2 shows that respondent No.2 Pankaj Mishra is owner of the offending vehicle, which was being driven by respondent No.1 Swapnil Yaduvanshi at the time of accident. As per Insurance policy Ex.R3, the offending vehicle was insured with respondent No.3, at the relevant period. As such, respondents No.1 to 3



i.e. driver, owner and insurer of the offending vehicle, are liable to pay this amount of compensation to the claimants, jointly and severally.

This issue accordingly stands decided in favour of the claimants”

10. A perusal of the impugned award reveals that the learned Tribunal has returned a well-reasoned and justified finding holding that the accident in question occurred due to the rash and negligent driving of the offending vehicle by respondent No.1, Swapnil.

11. So far as the contention raised by the appellant–Insurance Company regarding the effect of the Daily Diary Report (DDR), wherein it was mentioned that no one was at fault, is concerned, the same does not hold any merit in the eyes of law. The learned Tribunal has rightly appreciated the evidence on record and has correctly observed that the contents of the DDR are not conclusive so as to dislodge the otherwise cogent oral and documentary evidence adduced before it.

12. It clearly transpires from the record that the learned Tribunal has rightly placed reliance on the testimony of RW-3, SI Gurbachan Singh, who categorically admitted during his cross-examination that the offending vehicle had struck against the deceased. This admission materially supports the version of the claimants and demolishes the defence sought to be raised by the respondents. The learned Tribunal has, therefore, rightly assessed the issue of negligence on the basis of the overall evidence led before it, and this Court finds no infirmity or illegality in the approach adopted.

13. Furthermore, it is well-settled law that the standard of proof applicable in proceedings under the Motor Vehicles Act is that of preponderance of probabilities and not proof beyond reasonable doubt, as is required in criminal trials. In the present case, the claimants have successfully discharged the said



burden, and the learned Tribunal has rightly concluded that the accident occurred due to the rash and negligent driving of the respondent-driver.

14. So far as the further contention of the appellant–Insurance Company to the effect that the deduction towards personal and living expenses of the deceased ought to have been applied at the rate of one-fourth (1/4) instead of one-fifth (1/5), as adopted by the learned Tribunal, is concerned, the same is also wholly devoid of merit. The learned Tribunal has, upon due appreciation of the evidence on record, rightly concluded that the father of the deceased was financially dependent upon him. In view of the number of dependents, the deduction of one-fifth (1/5) of the income of the deceased towards personal expenses has been correctly applied while computing the loss of dependency. The said approach is in consonance with the settled principles governing assessment of compensation under the Motor Vehicles Act.

15. In view of the foregoing discussion, the findings returned by the learned Tribunal are sound, reasoned, and based on proper appreciation of evidence. The impugned award does not suffer from any illegality, perversity, or material irregularity warranting interference by this Court.

16. Consequently, the present appeal is dismissed being devoid of any merits.

17. Pending application (s), if any, also stand disposed of.

(SUDEEPTI SHARMA)

JUDGE

19.01.2026

Gaurav Arora

Whether speaking/non-speaking : Speaking
Whether reportable : Yes